

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0069**

State of Minnesota,
Respondent,

vs.

Allen Marquise Burson,
Appellant.

**Filed October 30, 2023
Affirmed
Bjorkman, Judge**

Stearns County District Court
File No. 73-CR-22-3526

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of third-degree controlled-substance crime, arguing the evidence is insufficient to prove he unlawfully possessed the 90 Oxycodone

pills he obtained through a prescription attributed to a doctor who did not write or sign it. We affirm.

FACTS

On April 22, 2022, appellant Allen Marquise Burson went to a pharmacy in St. Cloud to have a prescription filled for 90, 30-mg instant-release Oxycodone pills. The prescription was handwritten and contained a signature and Drug Enforcement Administration registration number of a local doctor. The pharmacist verified Burson's identity and filled the prescription. When she became aware of the prescription, the doctor who purportedly signed it reported the incident to law enforcement.

Burson was subsequently charged with third-degree possession of a controlled substance in violation of Minn. Stat. § 152.023, subd. 2(a)(3) (2020). He waived his right to a jury trial. At trial, the doctor testified that she did not write the prescription for Oxycodone, has never seen Burson as a patient, and has never written a prescription for him. The doctor explained that she rarely writes prescriptions by hand and the pad Burson's prescription was written on does not match the pad—in color or watermark—that her clinic uses. She further testified that the signature on Burson's prescription is not hers and that she has never prescribed the number or strength of Oxycodone pills reflected in the prescription. The doctor agreed that when she writes a prescription for Oxycodone, it provides the patient for whom it is written lawful authority to possess that drug.

The district court found Burson guilty as charged and imposed a stayed 54-month sentence.¹

Burson appeals.

DECISION

In considering a sufficiency-of-the-evidence challenge, we carefully review the record to determine whether the evidence is sufficient, when viewed in the light most favorable to the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We will not disturb a verdict “if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We apply the same standard of review to both jury and court trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

A person commits third-degree controlled-substance crime when they “on one or more occasions within a 90-day period . . . unlawfully possess[] one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units.” Minn. Stat. § 152.023, subd. 2(a)(3).² “Unlawfully” is defined as “selling or possessing a controlled substance in a manner not authorized by law.” Minn. Stat. § 152.01, subd. 20 (2020).

¹ This sentence was executed on May 30, 2023.

² There are five schedules of controlled substances. Oxycodone is a Schedule II controlled substance. Minn. Stat. § 152.02, subd. 3(b)(1)(ii)(J) (2020).

Burson argues that the evidence is insufficient to establish that his possession of the Oxycodone was unlawful. Citing *State v. Beganovic*, Burson contends that the state was required to prove—as an element of the offense—that he was “not authorized by law” to possess the Oxycodone. 991 N.W.2d 638, 647 (Minn. 2023). Beganovic was convicted of arson after burning down his own home. *Id.* at 641. The arson statute makes it a crime for a person to “unlawfully by means of fire . . . intentionally destroy[] . . . any building that is used as a dwelling.” *Id.* at 642 (quoting Minn. Stat. § 609.561, subd. 1 (2022)). Our supreme court agreed with Beganovic that “unlawfully” is an element of the arson offense. *Id.* at 654. And it concluded that sufficient circumstantial evidence supported his conviction, observing that

[i]t does not make sense for a person who is somehow authorized by law to burn his dwelling to do so at night, with his family inside, without safety officials on the scene, and then proceed to deny starting the fire in a 911 call and file an insurance claim asserting that he did not start the fire.

Id. at 654-55.

We agree that unlawfulness is an element of the possession offense and conclude that the state met its burden of proving that Burson obtained Oxycodone by means not authorized by law. Burson was not authorized to present the prescription to the pharmacist because it was not a valid prescription. Still, Burson contends that because the pharmacist filled the Oxycodone prescription, after following the proper distribution procedure, his possession was lawful. We disagree. The pharmacist’s actions are not at issue, Burson’s are. The pharmacist’s perception that Burson presented a valid prescription signed by a doctor does not make it so.

Like in *Beganovic*, the record does not support Burson's insufficiency argument. The doctor's testimony shows that she did not write or sign the prescription; Burson has never been her patient. And her unobjected-to testimony that a valid written prescription gives a patient the lawful authority to possess Oxycodone, supports the district court's finding that Burson's possession was not authorized by law. Based on our thorough review of the record, we conclude that sufficient evidence supports Burson's conviction.

Affirmed.